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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 IVAN LEE MATTHEWS,

Case No. 3:19-cv-00253-MMD-WGC

7 Plaintiff,

8 v.

ORDER

9 BRIAN WILLIAMS, *et al.*,

10 Defendants.

11
12 *Pro se* Plaintiff Ivan Lee Matthews, who is in the custody of the Nevada Department
13 of Corrections (“NDOC”) has submitted a civil rights complaint (“Complaint”) pursuant to
14 42 U.S.C. § 1983. (ECF No. 4.) On February 19, 2020, the Court issued an order
15 dismissing the Complaint with leave to file an amended complaint within 30 days to cure
16 the deficiencies in the Complaint. (ECF No. 3 at 8.) The time period for filing an amended
17 complaint has now expired, and Plaintiff has not filed an amended complaint or otherwise
18 responded to the Court’s order.

19 District courts have the inherent power to control their dockets and “[i]n the exercise
20 of that power, they may impose sanctions including, where appropriate . . . dismissal” of a
21 case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).
22 A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an
23 action, failure to obey a court order, or failure to comply with local rules. *See Ghazali v.*
24 *Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule);
25 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply
26 with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–41
27 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to
28 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th

1 Cir. 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779
2 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply
3 with local rules).

4 In determining whether to dismiss an action for lack of prosecution, failure to obey
5 a court order, or failure to comply with local rules, the Court must consider several factors:
6 (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to
7 manage its docket; (3) the risk of prejudice to the Defendants; (4) the public policy favoring
8 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
9 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130;
10 *Ferdik*, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

11 In the instant case, the Court finds that the first two factors, the public's interest in
12 expeditiously resolving this litigation and the Court's interest in managing the docket,
13 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
14 in favor of dismissal, since a presumption of injury arises from the occurrence of
15 unreasonable delay in filing a pleading ordered by a court or prosecuting an action. See
16 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy
17 favoring disposition of cases on their merits—is greatly outweighed by the factors in favor
18 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
19 the court's order will result in dismissal satisfies the “consideration of alternatives”
20 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d
21 at 1424. The Court's order requiring Plaintiff to file an amended complaint within 30 days
22 expressly stated that, if Plaintiff failed to timely file an amended complaint the Court would
23 dismiss the case with prejudice. (ECF No. 3 at 9.) Thus, Plaintiff had adequate warning
24 that dismissal would result from his noncompliance with the Court's order to file an
25 amended complaint within 30 days.

26 For the foregoing reasons, it is ordered that Plaintiff's application to proceed *in*
27 *forma pauperis* (ECF No. 1) without having to prepay the full filing fee is granted. Plaintiff
28 will not be required to pay an initial installment fee. Nevertheless, the full filing fee will still

1 be due, pursuant to 28 U.S.C. § 1915, as amended by the Prisoner Litigation Reform Act.
2 The movant herein is permitted to maintain this action to conclusion without the necessity
3 of prepayment of fees or costs or the giving of security therefor.

4 Pursuant to 28 U.S.C. § 1915(b)(2), the Nevada Department of Corrections will pay
5 to the Clerk of the United States District Court, District of Nevada, 20% of the preceding
6 month's deposits to Plaintiff's account (Ivan Matthews, II, #1127748), in the months that
7 the account exceeds \$10.00, until the full \$350.00 filing fee has been paid for this action.
8 The Clerk of the Court will send a copy of this order to the Finance Division of the Clerk's
9 Office. The Clerk of the Court will also send a copy of this order to the attention of the
10 Chief of Inmate Services for the Nevada Department of Corrections, P.O. Box 7011,
11 Carson City, NV 89702.

12 It is further ordered that, regardless of the success of Plaintiff's action, the full filing
13 fee will still be due, pursuant to 28 U.S.C. §1915, as amended by the Prisoner Litigation
14 Reform Act.

15 It is further ordered that this action is dismissed with prejudice based on Plaintiff's
16 failure to state a claim.

17 It is further ordered that the Clerk of Court will enter judgment accordingly and close
18 this case.

19 DATED THIS 3rd day of April 2020.

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22 MIRANDA M. DU
23 CHIEF UNITED STATES DISTRICT JUDGE
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